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Human Rights Committee

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Summary record (partial)* of the 2891st meeting

Held at Headquarters, New York, on Friday, 30 March 2012, at 19 a.m.

Chairperson: Ms. Majodina

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* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 12 p.m.

Organizational and other matters (*continued*)

Working methods (*continued*)

1. **Mr. Salama** (Director, Human Rights Treaty Division, Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that the fact that treaty bodies increasingly saw themselves as a system would help them develop a strong joint strategy in dealing with Member States. He had stressed repeatedly to the General Assembly that the participation of treaty bodies in the forthcoming consultations on treaty body strengthening with Member States in New York was fundamental. The role of the treaty bodies as depicted in paragraphs 4 and 6 of General Assembly resolution 66/254 was not appropriate, as it put key stakeholders with exclusive authority and responsibilities on equal footing with unnamed stakeholders. He hoped the open-ended intergovernmental process would be different in practice. There was an emerging consensus on areas in which Member States could and should take decisions, including resources, reporting, elections and implementation; other areas should be managed by treaty bodies themselves.

2. **Ms. Lee** (OHCHR), introducing a proposal for a comprehensive reporting calendar, said that the calendar would help to streamline States parties' reporting obligations. On average, most States parties were responsible for submitting 10 periodic reports to the various treaty bodies. Grouping those reports over a five-year cycle would result in an obligation to submit two reports per year. Under the comprehensive reporting calendar, some 20 per cent of States parties would submit reports each year and treaty bodies would hold constructive dialogues with the 20 per cent that had submitted a report the previous year. Thus, over a period of five years, treaty bodies would consider all the reports of all the States parties.

3. The calendar would help to minimize the significant backlog in some treaty bodies' consideration of States parties' reports. It had been proposed that reports should be considered within one year of submission. Following submission, NGOs and other stakeholders would have six months to submit additional information and Committees would have six additional months to prepare for the constructive dialogue with the State party; such a time frame should also allow sufficient time for documentation processing.

4. The focus would shift from States parties' willingness to submit reports in a timely manner to the need for strict compliance with the calendar. That would likely result in the need for treaty bodies to implement procedures to consider the situation of States parties in the absence of a report. Thus far, such procedures had been successful at stimulating the submission of a State party's subsequent report; there was no reason to believe they would not continue to be so.

5. The issue of savings was less clear. Had treaty bodies received necessary funding from the beginning, the comprehensive reporting calendar would likely have represented significant savings. As it was, treaty bodies would need to reflect on how they would ensure consideration of all the reports to be submitted, for instance, through the use of dual chambers. Generally speaking, treaty bodies were encouraged to consider how best to ensure that the reporting system functioned as it had been originally intended: a periodic review of all States parties, which allowed the treaty bodies to fulfil their role of highlighting existing problems, and also serving as an early warning mechanism through the implementation of Covenant rights. The proposal for a comprehensive reporting calendar would work only if all the treaty bodies were willing to take the same approach. The calendar was compatible with but not dependent on other proposals, such as the Human Rights Committee's procedure of the list of issues prior to reporting.

6. **Mr. Thelin** said that he was generally not a proponent of a one-size-fits-all approaches. The flexibility provided for by the Covenant, which did not specify a reporting period, was crucial to the Committee's work. He drew attention to the proposal adopted by the Committee at its current session to extend the periodicity of reporting to three to six years.

7. While resources from the Secretariat had certainly decreased sharply since the Committee's establishment, it was difficult to assess the actual changes in funding and costs over time, given the lack of a fixed baseline. Further details about the resources situation would be welcome.

8. He would like to know whether OHCHR might be able to reallocate existing resources to provide the

Petitions Unit with three P-3 staff on a temporary basis. If resources could not be found through reallocation, the Committee planned to approach the General Assembly with a request for additional resources. The statement of programme budget implications included astonishingly high costs for the processing of documentation; it would be particularly useful to understand the significant costs associated with translation.

9. **Sir Nigel Rodley** said that his previous scepticism with regard to the objectives and functioning of the comprehensive calendar had been allayed somewhat. He questioned the calculation of 10 reports per year, however; by his reckoning States had reporting obligations to eight treaty bodies. He would be interested to know what impact that calculation would have on the calendar.

10. The approach of meeting in dual chambers could be a solution for some committees in meeting the increased workload without unduly restricting the time available for consideration of reports. While the list of issues prior to reporting procedure would undeniably cut costs if adopted by States, he asked whether the savings would go to the Office of the High Commissioner for Human Rights, or would be dispersed in conference services, which would still be unable to provide all the services needed by the Committee. Furthermore, even if the Fifth Committee allocated more resources, there was no assurance that they would be allocated to the work of treaty bodies and not redeployed.

11. **Mr. Neuman** said that the success of the comprehensive calendar was dependent on States' compliance, and he wondered how it would work if they did not meet their obligations. When the Committee utilized its practice of considering situations in the absence of a report, it currently asked States parties to submit a report as soon as possible. Under the comprehensive calendar, it appeared that States would be entitled to wait a further five years before the Committee could ask anything of them. He was concerned that for non-compliant States, the calendar created an expectation that they could use it to delay further the submission of reports.

12. **Mr. Fathalla** said that he would be interested to know the reactions of States, as the stakeholders that must respect the reporting calendar.

13. **Mr. Iwasawa** said that he, too, was sceptical of the comprehensive calendar. With regard to the assignment and duties of staff in the Petitions Unit, he suggested that they might concentrate more efforts on preparing communications for the Committee's consideration.

14. **Ms. Motoc** said that the presentation had clarified the more practical aspects of the calendar and alleviated some of her misgivings, particularly that there would be a reduction in the protection of human rights. She echoed the concerns expressed on financial matters, especially the need for more funds to deal with the backlog. Paradoxically, although the Committee was ready to consider more cases, even with more resources, the secretariat could not always supply additional communications.

15. **The Chairperson** proposed continuing in a closed meeting to allow Mr. Salama and his colleagues more liberty to answer sensitive questions.

16. **Mr. Thelin** said that he disagreed with that suggestion on the grounds of transparency and openness. The discussion was being held within the broader context of treaty body strengthening; closing the meeting would only raise questions.

17. **Mr. Salama** (Director, Human Rights Treaties Division, OHCHR) said that, as he also believed in transparency, he would gladly provide answers in a public meeting, as the Committee wished, but would be unable to discuss certain ongoing issues.

18. **Mr. Flinterman** said that it was clear from discussions on whether the master calendar would work for the Human Rights Committee that the only consensus had been that further analysis was needed. He had always supported the calendar, particularly its rationale: to create accountability for States parties both domestically and internationally. However, given that most committees had longer intervals between consideration of State reports, he asked why five years had been chosen instead of six, which would ease the burden on the treaty bodies.

19. **Ms. Chanet** asked how the follow-up procedure was incorporated under the comprehensive calendar. Follow-up was very useful for States as it provided for reports containing detailed, targeted information in response to a list of issues.

20. She drew attention to the difficulty of considering country situations in the absence of a report. In the

Human Rights Committee, that entailed a formal review of a situation, after which States still had to submit a report on their adherence to the legal aspects of a treaty.

21. She shared the concerns about resources, citing the fact that there had been insufficient cases for the last working group on communications to consider.

22. **Mr. Kälin** said that he had approached the comprehensive calendar with an open mind, appreciating the premise of taking reporting obligations seriously. He would be willing to sacrifice the current flexibility of reporting deadlines, as in reality the average cycle exceeded five years. His first concern, however, was related to resources when working in dual chambers. The cost implications were huge and he would like to know whether an analysis had been done of the additional budgetary resources necessary. He feared that there might be financial restrictions, which could lead to fewer meetings and fewer issues dealt with, in something similar to the universal periodic review. There was a danger that in the long term, the differences between the universal periodic review and treaty body reporting could be blurred.

23. His second point was that more treaty bodies were moving towards the procedure of accepting communications from individuals. It was important not to lose sight of the fact that they thus had impact on the lives of real people: there had been cases in which the Committee's decisions had resulted in stays of execution or deportation. He asked whether the Division had considered the risk that, in adopting the comprehensive calendar, there would be even fewer resources for individual communications.

24. **The Chairperson**, speaking in her personal capacity, said that it appeared from the report of the last consultations in Geneva that States parties were increasingly willing to engage in the treaty body strengthening process. However, some had voiced reluctance to adopt the calendar because they lacked the capacity to submit two reports per year. She knew that many countries in her region could not overcome that technical difficulty, and with the Human Rights Committee currently operating at 50 per cent compliance, she wondered whether, if the Committee was obliged to examine States in the absence of a report, that would not encourage States to use the calendar as a reason for further delay. Since rule 70 of the Committee's rules of procedure established that States were to submit a report within two years of such a procedure, she asked about the implications of keeping to the planned five-year reporting cycle.

25. **Mr. Salama** (Director, Human Rights Treaties Division, OHCHR), in response to Mr. Thelin, said that the system was functioning with low compliance by States and Committees' dedication. Both needed to be increased; that was why the comprehensive calendar was being introduced — not to present a new idea, but to recall existing legal obligations. The Petitions Unit was important, and the General Assembly would have to continue receiving ad hoc requests for resources until a comprehensive solution was found based on an annual evaluation of needs and the master calendar.

26. While internal reallocation of resources was theoretically possible, practically, it was a question of deciding who would benefit to the detriment of others, a constant struggle when all parts of the system were complementary. Sir Nigel Rodley's question on where savings went had also been raised by many Member States. Consultations with the Fifth Committee had revealed that it was legally possible to decide where funds should be allocated if it was made explicit. It would be meaningless for the system to provide for an entitlement if it could not be reallocated elsewhere.

27. **The Chairperson** said that she took it that members wished to continue the discussion in a closed meeting at the afternoon session.

28. *It was so decided.*

The meeting rose at 1 p.m.